IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.374 OF 1993

Jayant Ghanshyamlal Bhavsar, residing at 7/303, Samta Nagar, Vartak Nagar, Opposite J.K. Gram School, Thane (West)- 400 606. ..Petitioner.

Versus

1. Shree Vikramsinh Shoorji Gurukul Technical High School and Junior College, through it's Principal having his office at Gurukul Lane, Tilak Road, Ghatkopar (East), Bombay-400 077.

2. M.P.Arya Vidya Sabha, through its Secretary, having his office at Gurukul Lane, Tilak Road, Ghatkopar (East), Bombay-400 077.

3. State of Maharashtra, through the Secretary, Education and Employment Department, Mantralaya, Churchgate, Bombay.

4. The Deputy Director of Vocational Education Training, having his office at 49, Kherwadi, Ali Yawar Jang Marg, Bandra (East), Bombay - 400 051.

5. Sitlaprasad Sinh, residing at D/15, Bhantwadi, Opposite Fish Market, Ghatkopar

(West), Bombay-400 086.) ..Respondents.

....

Mr.Mihir Desai, Advocate for the Petitioner.
Mrs.S.M.Dandekar, A.G.P., for Respondent No.3.
Mrs.A.B.Shah, Advocate for Respondent Nos.1 & 2.

....

CORAM : **F.I.REBELLO AND SMT.V.K.TAHILRAMANI,JJ.**

DATED : **JUNE 08, 2006.**

JUDGMENT: (PER SMT.TAHILRAMANI,J.)

1. The petitioner who was an Assistant Teacher being aggrieved by the orders of the respondent No.4 seeking to recover an amount of Rs.28,187=50, has filed this Petition. The petitioner had been appointed as Assistant Teacher in June, 1964 in a private recognised and fully aided secondary school having both Gujarati and English medium. The petitioner was B.A.(II Class), B.Ed.(II Class) and M.A. (Pass Class). From June, 1964 upto August, 1972, the petitioner was working as Assistant Teacher in various schools. From September, 1972, he joined respondent No.1's

school as Assistant Teacher and he continued to work in the said school till his retirement in 1998. From June, 1964 to June, 1975 the petitioner taught Gujarati language subjects to VIIIth to XIth standards in the old pattern of education.

2. From June, 1975, the State introduced 10+2+3 pattern of education in the State of Maharashtra. In June, 1975 the college attached to respondent No.1 started first year of junior college. The petitioner was asked to teach Gujarati in the first year of junior college. In June, 1976 the second year of junior college was started and the petitioner was asked to teach Gujarati subjects in all the classes of the junior college. There was no other teacher in the college teaching Gujarati language at that time. In the beginning i.e. from June, 1975 upto 1st January, 1976, the petitioner was paid at Rs.65/- per month as additional allowance for teaching junior college classes. Thereafter Government

Resolution dated 6th May, 1976 came to be issued wherein secondary school teachers who were B.A.(IInd Class) and B.Ed with seven years teaching experience and who were asked to teach junior college classes attached to Secondary School from 1975-1976 onwards were called upon to exercise option to accept pay scale of Rs.300-650 or graded allowance as per their choice. In June, 1976, the petitioner exercised his option in favour of pay scale 300-650. Accordingly, entries were made in his service book.

3. The qualification required for teaching junior college is B.A.(II Class), B.Ed.(II Class) and M.A.(II Class). However, the petitioner was M.A. (Pass Class) and, therefore, he was not fully qualified.

4. By G.R. dated 6.5.1976, it was clarified that certain categories of teachers teaching higher secondary standards in the old pattern should be considered for teaching junior college.

The petitioner fell within the second category at Appendix "A" i.e. B.A.(II Class) and B.Ed. with seven years experience. In the said G.R., it was provided that this category of teachers would be considered for teaching junior college and would be held eligible for the pay scale of 300-650. It is further mentioned in the said G.R. that all the above mentioned teachers would continue to get pay scale of 300-650 in future. However, such of those teachers who do not fulfil the prescribed academic qualifications namely M.A., M.Sc., M.Com in IInd Class, should acquire these qualifications within a period of five years from the date of their appointment to teach junior college classes, failing which they will not be entitled to future increments in the scale of 300-650. The Government of Maharashtra further issued a G.R. dated 10.11.1982, by referring to earlier G.Rs. dated 6.5.1976, 29.4.1978 and 18.9.1980 regarding the revised pay-scale of the junior college teachers. The qualifications for junior college teachers were set-out in Appendix "A" to the said

G.R.. In the said Appendix, the revised qualifications with the revised pay-scales were shown as under :

APPENDIX (Para 1)

Appendix 'A' showing the revised scales of pay of Teachers in non-Government Junior College (Higher Secondary) Units attached to Secondary Schools, Colleges, and independent units.

JUNIOR COLLEGE TEACHERS

Sr. No.	Category	Scale of pay applicable prior to 1.4.1976	Revised pay scale applicable w.e.f. 1.4.1976	Revised Scale
1.	2.	3.	4.	5.
1.	Teachers with post - graduate degree in II Class plus B.Ed. or a diploma or certificate in teaching approved by Government	300-15-450-E.B. 20-550-25-650	500-20-700 -25-900	600-30-750-40 -1030 (w.e.f.1.6.1982)
2.	Teachers in the	300-15-450-E.B.	500-20-700	600-30-750

	Secondary Schools having the qualification of Bachelor's degree in II or pass class with B.Ed. and with 7 or 10 years experience of teaching standards VII - X/XI appointed to teach the Junior College Classes attached to the Secondary Schools during 1975-76 and who have opted for the scale applicable to the Jr. College Teachers, subject to the conditions that they should acquire the basic qualification of post graduation (IInd class) in the respective subjects before 1.6.87 failing which they will not be entitled to future increments in the existing scale.	20-550-25-650	-25-900	-40-1030 (only w.e.f. the date of acquiring the prescribed qualification.)
3.	Teachers with post graduate degree in II Class appointed to teach the Junior College Class in the scale of pay applicable to the Jr. College teachers subject to the conditions that they should acquire the professional qualification of B.Ed. or a Diploma or Certificate in teaching approved by Government before 1.6.1987 failing which they will not be entitled to future increments even in the existing scale.	300-15-450-E.B. 20-350-25-650	500-20-700 -25-900	600-30-750 -40-1030 (w.e.f. the date of - acquiring the prescribed qualification)

4.	Teachers with B.Com(II Class) with Chartered Accountancy.	300-15-450-E.B. 20-550-25-650	500-30-700 -25-900	600-30-750 -40-1030 (w.e.f.6.6.82)
5.	Teachers with B.Sc. (at least IInd Class) B.Tech. appointed to teach the Jr.College class subject to the conditions that they should acquire professional qualification of B.Ed. or Diploma or Certificate in teaching approved by Government before 1.6.87 failing which they will not be entitled to future increments even in the existing scale.	300-15-450-E.B. 20-550-25-650	500-20-700 -25-900	600-30-750 -1030 (only w.e.f. the date of acquiring the prescribed qualification.)

5. In the instant case the petitioner possesses the qualification of B.A.(II Class), B.Ed.(II Class) and M.A.(Pass Class), and, therefore, he did not satisfy the qualifications set-out at Sr.Nos.1, 3, 4 & 5 of the Appendix. However, he fell in the category at Sr.No.2 of the Appendix, as he had completed more than ten years

of teaching and, therefore, he was entitled for the revised pay-scale from 500-900 to 600-1020. By the said G.R., it was further clarified that the teachers who were appointed to teach junior college classes attached to secondary schools during the years 1975-1976 and who had opted for the pay-scales applicable to the junior college teachers, were required to obtain the basic qualifications of post graduate in IInd Class before 1.6.1987 and failing which they would not be entitled to future increments in the existing scale. Undoubtedly, the petitioner possesses the post-graduate qualification in Pass Class and he could not upgrade the same to IInd Class by reappearing for the M.A. examination before 1.6.1987. This failure on his part, would not entitled him for future increments from 1.6.1987 and onwards in the revised pay-scale as existed as on 1.6.1987.

6. The recoveries were sought to be made by the Management vide its letter dated 8.3.1988 and

8.7.1988, pursuant to the letter dated 29.2.1988 received by the Management from the Deputy Director of Vocational Education Training i.e. respondent No.4 herein. This order from respondent No.4, which is annexed at Exhibit "G" to the Petition, is on the presumption that the petitioner was placed in the revised pay-scale of 600-30-750-40-1030, as set-out in the Annexure to G.R. dated 10.11.1982. This presumption is belied by letter dated 18.7.1990 addressed by the Management to the petitioner. In the said letter the basic pay received by the petitioner from 1.4.1976 to 1.8.1989 has been set out and after the G.R. dated 10.11.1982 was issued, the basic pay received by the petitioner is shown as under:

1.8.83	Rs.660/-
1.8.84	Rs.680/-
1.8.85	Rs.700/-
1.1.86	Rs.2,050/-
1.8.86	Rs.2,100/-
1.8.87	Rs.2,150/-
1.8.88	Rs.2,200/-

1.8.89	Rs.2,250/-

7. From the above statement, it is clear that from 1.4.1976 to 1.8.1885, the petitioner has been paid his salary in the pay-scale of Rs.500-20-700-25-900 and not in the pay-scale of Rs.600-30-750-40-1030. If the contentions of the respondents are accepted that the petitioner was offered higher pay-scale, pursuant to G.R. dated 10.11.1982, his pay-scale ought to have been as under :

1.8.83	Rs.670/-
1.8.84	Rs.700/-
1.8.85	Rs.730/-

. The petitioner has not been granted this scale and, therefore, the irresistible conclusion to be drawn is that the petitioner continued to receive his pay in the scale of Rs.500-20-700. Even otherwise, failure of the petitioner to obtain the post-graduate qualification in IInd Class would only deny him future increments in the

existing pay-scale from 1.6.1987 as is clear from the G.R. dated 10.11.1982. The said G.R. does not stipulate that on failure to obtain the qualifications before 1.6.1987, the teacher concerned, like the petitioner, would be reverted to the old pay-scale of Rs.500-20-700-25-900. Thus, on both counts, the impugned recoveries are illegal and therefore, the petitioner’s challenge to the same is required to be upheld.

8. In the result, the impugned recoveries are set-aside and the communications dated 8.3.1988 and 8.7.1988 as well as communication dated 29.2.1988 received by the Management from the respondent No.4-Deputy Director of Vocational Education Training are hereby quashed and set-aside. The recoveries, already made based on the said directives, be refunded to the petitioner, within a period of three months from today.

9. Rule made absolute accordingly. No order as to costs.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]